

recovery program has operated successfully during its testing, MBS has decided to request permanent approval of the EPN service.

Prior to the establishment of the EPN service, participants in the mortgage-backed securities market had to manually telephone or fax pool information to other participants. Historically, billions of dollars of fails occurred because sellers were not able to communicate with buyers because of telephone and fax limitations (e.g., busy signals preventing the exchange of information). The Commission is permanently approving the rules for the EPN service because it believes that replacing a manually intensive communication system with an electronic communication system should help to significantly reduce the number of fails in the mortgage-backed securities market by making the notification process more efficient and more reliable. Furthermore, MBS has demonstrated that the disaster recovery program for the EPN service is capable of ensuring the continuity of critical EPN business operations in the event the primary computer operations become unavailable to EPN users.⁸

MBS has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The temporary approval period for the EPN service will expire on November 30, 1995. The Commission finds good cause to grant accelerated approval of the proposal because the EPN service has operated successfully since its implementation and because the Commission did not receive any comment letters during the comment period before it granted temporary approval or during the temporary approval period and because the Commission does not expect to receive any during the current comment period. Furthermore, accelerated approval will allow the EPN service to continue operating without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to file number SR-MBS-95-09 and should be submitted by December 29, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBS-95-09) be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36547; File No. SR-NSCC-95-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Regarding Arrangements Between the National Securities Clearing Corporation and Chicago Stock Exchange, Incorporated Relating to a Decision by Chicago Stock Exchange, Incorporated to Withdraw From the Clearance and Settlement, Securities Depository, and Branch Receive Businesses

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 24, 1995, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-95-15) as described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves proposed arrangements relating to a decision by the Chicago Stock Exchange, Incorporated ("CHX") to withdraw from the clearance and settlement, securities depository, and branch receive businesses. Parties to the proposed arrangements are The Depository Trust Company ("DTC"), CHX, Midwest Securities Trust Company ("MSTC"), NSCC, Midwest Clearing Corporation ("MCC") and Securities Trust Company of New Jersey ("STC/NJ").²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CHX has announced that it is closing its clearance and settlement and securities depository facilities in order to focus its resources on the operations of the exchange. CHX has determined to take this step in response to recommendations by industry users to eliminate redundant facilities and thereby reduce the costs of processing securities transactions. The proposed arrangements will assist in achieving these objectives while affording qualified sole MCC participants an opportunity to become NSCC participants and transfer their continuous net settlement positions to NSCC. NSCC's primary purpose for entering into the proposed arrangements at this time is to facilitate the industry's planned conversion to same-day funds

⁸ On September 27, 1995, staff of the Division of Market Regulation met with MBS to discuss the disaster recovery program developed for the EPN service. The staff also reviewed and assessed documentation related to the management and operation of the disaster recovery system and conducted an examination of the primary data center.

⁹ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² STC/NJ is a subsidiary of CHX that currently provides certain services, including a securities custody service. STC/NJ is not a clearing agency as defined in the Act and therefore is not required to register with the Commission.

³ The Commission has modified the text of the summaries prepared by NSCC.

settlement.⁴ Additionally, the proposal will result in substantial savings for NSCC participants and the securities industry as a whole.

Currently, transactions in equities, corporate debt, and municipal debt are settled in next-day funds.⁵ Transactions in commercial paper and other money market instruments are settled in same-day funds. As the Commission is aware, DTC and NSCC have been working with the industry over the last few years to develop a system that will provide for the settlement of virtually all securities transactions in same-day funds. DTC's and NSCC's efforts have been encouraged by the Commission, the Board of Governors of the Federal Reserve System, and the Federal Reserve Bank of New York, and NSCC's plans have been monitored by the staffs of these regulatory bodies.⁶ Under the conversion plan, all issues currently settling in next-day funds will be converted to settlement in same-day funds settlement on a single day. Several months ago, a consensus was reached that the conversion date will be February 22, 1996.

Where there are interfaces among the securities clearing corporations, same-day funds settlement exposes each clearing corporation, same-day funds settlement exposes each clearing corporation to settle its net payment obligation because of a failure by one of the participants of such other clearing corporation to settle with it or because such other clearing corporation is experiencing a major systems problem. These risks cannot be entirely avoided with existing and available risk management controls. CHX's withdrawal from the securities clearing corporation business will eliminate the exposure of NSCC and its participants to the payment system risks associated with the NSCC-MCC interface. Also, the interests of MCC participants can be provided for in an orderly manner that will help assure their successful

integration in the process of converting to same-day funds settlement.

The proposed arrangement should result in substantial savings for NSCC participants and the securities industry. In connection with this proposal, former sole MCC participants may become NSCC participants if they qualify. An increase in the number of NSCC participants will result in higher NSCC transaction volumes thereby reducing the per-unit service costs that must be recovered through participant service fees. Moreover, interclearing corporation interfaces involve the maintenance of substantial facilities, communications networks, and account and inventory reconciliation mechanisms. As a result of the proposal, the substantial costs incurred by both NSCC and MCC in operating an interface would be eliminated.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to NSCC because the proposed arrangements will facilitate the industry's conversion to same-day funds settlement for virtually all securities transactions and thereby facilitate the prompt and accurate clearance and settlement of such transactions. The proposal will provide qualified sole MCC participants. The proposal will provide qualified sole MCC participants with access to NSCC's facilities and will be implemented consistently with the safeguarding of securities and funds in NSCC's custody and control.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC believes the proposed arrangements would impose no burden on competition. Securities clearing corporations registered under Section 17A of the Act are utilities created to serve members of the securities industry for the purpose of providing certain services that are ancillary to the business in which industry members compete with one another. Operating a securities clearing corporation requires a substantial and continuing investment in infrastructure, including telecommunications links with users, data centers, and disaster recovery facilities, in order to meet the increasing needs of participants and to respond to regulatory requirements.

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost clearance services provided under the mandate of the Act. The overall cost to the industry of having such services available will be

reduced, thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NSCC consents, the Commission will:

- (a) By order approve such proposed rule change or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the file number SR-NSCC-95-

⁴ The term "same-day funds" refers to payment in funds that are immediately available and generally are transferred by electronic means.

⁵ The term "next-day funds" refers to payment by means of certified check that is for value on the following day.

⁶ In approving certain modifications of DTC's existing system in order to accommodate the overall conversion to same-day funds settlement, the Commission stated that it believes that the overall conversion to a same-day funds settlement system will help reduce systemic risk by eliminating overnight credit risk. The same-day funds settlement system also will reduce risk by achieving closer conformity with the payment methods used in the derivatives markets, government securities markets, and other markets. Securities Exchange Act Release No. 35720 (May 16, 1995), 60 FR 27360 [File No. SR-DTC-95-06] (order granting accelerated approval to proposed rule change modifying the same-day funds settlement system).

15 and should be submitted by December 29, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36548; File No. SR-NASD-95-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to NAcqess System and Accompanying Rules of Fair Practice

December 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, attached as Exhibit A is the full text of a series of proposed rule changes by the NASD and The Nasdaq Stock Market, Inc. ("Nasdaq") regarding the operation of The Nasdaq Stock Market's NAcqess system, a new system that offers nationwide limit order protection and price improvement² over the dealer

quotation of small-sized customer orders. The "Rules of Operation and Procedures for NAcqess" ("NAcqess Rules") will replace in its entirety the "Rules of Practice and Procedures for the Small Order Execution System" ("SOES Rules"), which the NASD proposes to withdraw simultaneously with the new system becoming operational. The NAcqess system rules package attached in Exhibit A is new and accordingly has not been italicized. The NASD is also proposing several new Interpretations and a new Rule in its Rules of Fair Practice to afford individual investors the opportunity to determine whether their orders are to be handled in NAcqess and to provide customer limit orders held in NAcqess or elsewhere with enhanced price protection (Exhibit B). The NASD is also proposing conforming modifications to the NASD Manual, including the Rules of Practice and Procedure for the Automated Confirmation Transaction Service ("ACT Rules") and Schedule D to the NASD By-Laws (and all other places in the Manual that refer to SOES) to delete references to SOES and/or the SOES Rules and to replace those references with NAcqess and/or the NAcqess Rules, as appropriate. These references may be found in the ACT Rules, Section (c)(2); in Schedule D, Part V, Section (1)(f), Section (7)(a), Section (8)(c), and Section (9); and Schedule D, Part XI, Section (2)(e)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Introduction

The NASD and The Nasdaq Stock Market, Inc. are proposing rules of operation and procedure and companion rules for a new service that provides investors market-wide price protection of their limit orders, the

opportunity to obtain price improvement over the dealer quotation in buying and selling Nasdaq stocks, and increased access to the Nasdaq market. The new facility, to be named NAcqess and operated by The Nasdaq Stock Market, will permit significant opportunity for investors in Nasdaq securities to enter limit orders inside the Nasdaq dealer quotation and enhance the opportunity for such investors to receive executions between the best dealer bid and offer without such orders interacting with market makers. The limit orders at the top of the NAcqess limit order file that are the same as or better than the best dealer quotations will be included in the inside market for The Nasdaq Stock Market, thereby providing new levels of transparency, increased price efficiency, and greater investor protection. Further, the companion rule and Interpretations accompanying the new system will provide retail customers with enhanced price protection of their limit orders, a significant expansion over current limit order protection afforded to customers in the Nasdaq market. Finally, NAcqess will provide customers that choose to enter market orders into the system with the opportunity to obtain price improvement over the dealer quotation through interaction with customer limit orders in the NAcqess file and will provide a prompt, cost-effective execution at the best price available in the market at any particular point in time.

NAcqess and the accompanying new Rules of Fair Practice provide multiple benefits to retail investors that were heretofore unavailable to such investors. A key feature of NAcqess that is a significant enhancement over current practices in Nasdaq is the ability of investors to have limit orders placed in a central file where they can interact directly with other customer limit orders and market orders entered into the system. Under a proposed new Interpretation to Article III, Section 1 of the Rules of Fair Practice, a customer may instruct its broker-dealer to enter the customer's limit order or market order into NAcqess. Moreover, NAcqess will provide increased transparency of the best priced limit orders in NAcqess because Nasdaq will incorporate into the Nasdaq inside market limit orders that are priced the same as or better than the best dealer bid and offer displayed in Nasdaq, and their aggregate sizes in a particular security. This increased transparency will enhance the Nasdaq price discovery process. NAcqess will match incoming limit and market orders against limit orders resident in the

⁷ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Commission Note: The NASD's use of the term "price improvement" in this proposal differs from the use of the term in recent Commission releases. Specifically, the Commission has used the term when referring to the opportunity to receive a price that is superior to best bid or offer. See, e.g., 17 CFR 11Ac1-3(a)(2); Securities Exchange Act Release No. 34902 (Oct. 27, 1994), 59 FR 55006 (Nov. 2, 1994) at text accompanying n. 32. The NASD's use of the term in this proposal, on the other hand, refers to the opportunity to receive a price that is better than the best market maker quotation, which may not be the best bid or offer to the extent NAcqess limit orders are included. In its recent rule proposal concerning the obligations of market makers executing customer orders, the Commission asked for comment on whether automated systems that include the possibility of the interaction of market orders with limit orders should be deemed to satisfy the proposal's requirement that market orders be provided with an opportunity for price

improvement. Securities Exchange Act Release No. 36310 (Sept. 29, 1995), 60 FR 52792 (Oct. 10, 1995).